

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

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OCT 02 2006
MARKUS B. ZIMMER, CLERK
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COURT, DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware
corporation,

Plaintiff and Counterclaim-
Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant and Counterclaim-
Plaintiff.

**DECLARATION OF MICHAEL A.
JACOBS IN SUPPORT OF NOVELL,
INC.'S MOTION FOR PARTIAL
SUMMARY JUDGMENT OR
PRELIMINARY INJUNCTION**

*[REDACTED pursuant to the August 2,
2006 Stipulated Protective Order]*

Case No. 2:04CV00139

Judge Dale A. Kimball

I, Michael A. Jacobs, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and a partner at the law firm of Morrison & Foerster LLP, counsel of record for Defendant and Counterclaim-Plaintiff Novell, Inc. ("Novell") in this action. I was admitted to practice before this Court *pro hac vice* by this Court's Order of February 10, 2004. I submit this declaration in support of Novell's Motion for Partial Summary Judgment or Preliminary Injunction. The statements made herein are based on my personal knowledge.

2. As discussed below, some of the exhibits attached hereto include information that may be subject to the August 2, 2006 Stipulated Protective Order. Accordingly, the complete version of this declaration, which includes full and unredacted copies of all exhibits, is being filed under seal. A public version of this declaration, which deletes or redacts confidential documents and information, is also being submitted.

3. Attached as Exhibit 1 is a true and correct copy of the Asset Purchase Agreement ("APA"), dated September 19, 1995, which SCO attached as part of Exhibit A to its Complaint, filed January 20, 2004.

4. Attached as Exhibit 2 is a true and correct copy of Amendment No. 1 to the APA, dated December 6, 1995, which SCO attached as part of Exhibit A to its Complaint, filed January 20, 2004.

5. Attached as Exhibit 3 is a true and correct copy of Amendment No. 2 to the APA, dated October 16, 1996, which SCO attached as part of Exhibit A to its Complaint, filed January 20, 2004.

6. Attached as Exhibit 4 is a true and correct copy of the SCO Quarterly Report, Form 10-Q, for the quarter ended July 31, 2003, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/1104659-03-20700/03-00.pdf>.

7. Attached as Exhibit 5 is a true and correct copy of the Caldera Annual Report, Form 10-K, for the year ended 2002, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/1047469-03-3091/03-00.pdf>.

8. Attached as Exhibit 6 is a true and correct copy of the Caldera Annual Report, Form 10-K, for the year ended 2000, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/950134-01-558/01-00.pdf>.

9. Attached as Exhibit 7 is a true and correct copy of the SCO Annual Report, Form 10-K, for the year ended 2003, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/1047469-04-2142/04-00.pdf>.

10. Attached as Exhibit 8 is a true and correct copy of the May 12, 2003 letter from SCO to Novell, as downloaded from

http://www.novell.com/licensing/indemnity/pdf/5_12_03_sco-n.pdf.

11. Attached as Exhibit 9 is a true and correct copy of a 2003 Sun Microsystems, Inc. Software License Agreement signed by SCO and Sun, as produced in this litigation by SCO with the Bates range SCO1300064-1300076. This Exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order. The public version of this declaration does not include this document.

12. Attached as Exhibit 10 is a true and correct copy of the Software License and Distribution Agreement between Novell and Sun, dated January 1, 1994 from Novell's files.

This Exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order.

The public version of this declaration does not include this document.

13. Attached as Exhibit 11 is a true and correct copy of a 2003 Agreement between SCO and Microsoft Corporation, as produced in this litigation by SCO with the Bates range SCO1300033-1300046. This Exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order. The public version of this declaration does not include this document.

14. Attached as Exhibit 12 are true and correct copies of the amendments to the 2003 Agreement between SCO and Microsoft (referenced in paragraph 13, above), as produced in this litigation by SCO with the Bates range SCO1300026-1300031. Novell has added page numbers, from 1 to 6, in the lower right corners for citation purposes. This Exhibit is being filed under seal pursuant to the August 2, 2006 Stipulated Protective Order. The public version of this declaration does not include this document.

15. Attached as Exhibit 13 is a true and correct copy of the November 21, 2003 letter from Novell to SCO, as downloaded from

http://www.novell.com/licensing/indemnity/pdf/11_21_03_n-sco.pdf.

16. Attached as Exhibit 14 is a true and correct copy of the December 29, 2003 letter from Novell to SCO, as downloaded from

http://www.novell.com/licensing/indemnity/pdf/12_29_03_n-sco.pdf.

17. Attached as Exhibit 15 is a true and correct copy of the January 7, 2004 letter from SCO to Novell, as downloaded from

http://www.novell.com/licensing/indemnity/pdf/1_7_04_sco-n.pdf.

18. Attached as Exhibit 16 is a true and correct copy of the February 4, 2004 letter from Novell to SCO, as downloaded from

http://www.novell.com/licensing/indeemnity/pdf/2_4_04_n-sco.pdf.

19. Attached as Exhibit 17 is a true and correct copy of the March 1, 2004 letter from Novell to SCO, from Novell's files.

20. Attached as Exhibit 18 is a true and correct copy of the April 2, 2004 letter from Novell to SCO, from Novell's files.

21. Attached as Exhibit 19 is a true and correct copy of the November 17, 2004 letter from Novell to SCO, from Novell's files.

22. Attached as Exhibit 20 is a true and correct copy of a SCO discovery response received by Novell, entitled "SCO's Responses and Objections to Defendant's First Set of Interrogatories and Second Set of Requests for Production," dated January 27, 2006. Despite Novell's repeated requests throughout 2003, 2004, and 2005, SCO did not actually produce the 2003 Sun and Microsoft Agreements to Novell until February 7, 2006, as part of the discovery for this litigation. SCO produced these Agreements alongside approximately 130,000 other documents comprising roughly 660,000 pages of material.

23. Attached as Exhibit 21 is a true and correct copy of the SCO Annual Report, Form 10-K, for the year ended 2005, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/1104659-06-4452/06-00.pdf>.

24. Attached as Exhibit 22 is a true and correct copy of the SCO Quarterly Report, Form 10-Q, for the quarter ended January 31, 2006, as downloaded from

<http://www.shareholder.com/common/edgar/1102542/1104659-06-17732/06-00.pdf>.

25. Attached as Exhibit 23 is a true and correct copy of the SCO Quarterly Report, Form 10-Q, for the quarter ended July 31, 2006, as downloaded from
<http://www.shareholder.com/common/edgar/1102542/1104659-06-60911/06-00.pdf>.

26. Attached as Exhibit 24 is a true and correct copy of a Salt Lake Tribune news article entitled *Judge Voids Most SCO Claims* by Bob Mims, dated June 29, 2006, as downloaded from http://www.sltrib.com/search/ci_3997087 on June 30, 2006.

27. Attached as Exhibit 25 is a true and correct copy of a February 5, 2004 letter from SCO to Novell, as downloaded from
http://www.novell.com/licensing/indemnity/pdf/02_05_04_sco-n_letter.pdf.

28. Attached as Exhibit 26 is a true and correct copy of the SCO Quarterly Report, Form 10-Q, for the quarter ended April 30, 2003, as downloaded from
<http://www.shareholder.com/common/edgar/1102542/1104659-03-12299/03-00.pdf>.

29. Attached as Exhibit 27 is a true and correct copy of SCO's May 19, 2003 press release, as produced in this litigation by SCO with the Bates number SCO145153.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 29th day of September, 2006 in San Francisco, California.



Michael A. Jacobs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2006, I caused a true and correct copy of **DECLARATION OF MICHAEL A. JACOBS IN SUPPORT OF NOVELL, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION** *[REDACTED pursuant to the August 2, 2006 Stipulated Protective Order]* to be served to the following:

Via Hand Delivery:

Brent O. Hatch
Mark F. James
HATCH JAMES & DODGE, P.C.
10 West Broadway, Suite 400
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Via first class U.S. mail, postage prepaid:

Stephen N. Zack
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